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| Advisory Action Before the Filing of an Appeal Brief | Application No. 10/591,448 | Applicant(s) SEITZ, JOHANN |
| | Examiner ZEEV KITOV | Art Unit 2836 |

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED **18 December 2009** FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires _____ months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a) They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) They raise the issue of new matter (see NOTE below);
- (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. Applicant's reply has overcome the following rejection(s): _____.

6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1, 3 - 5, 7 - 11, 13 - 15, 17 - 21.

Claim(s) withdrawn from consideration: 2, 6, 12, 16.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see below.

12. Note the attached *Information Disclosure Statement(s)*. (PTO/SB/08) Paper No(s). _____.

13. Other: _____.

/Stephen W Jackson/
Primary Examiner, Art Unit 2836

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive. Applicant mostly argues an amended version of Claims, which are not entered and therefore are not part of the record. However, some other arguments are to be addressed.

Completely ignoring the motivational statement for combining Delhomme and Becker references (page 5 in the Office Action) Applicant alleges "However, there is no motivation or suggestion to redesign the dryer motor of Delhomme according to the teachings of Becker. For example, the motor of Delhomme (i.e., the rotor 1 and stator 2) does not require, nor is a need suggested for, a switching device between the alleged protective device 26 and the motor 1, 2.

However, the Office Action provides two motivational statements for such repositioning of the parts: (1) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Delhomme circuit by moving the switching device (the inverter) to position between the protective device and the motor since in both cases the protective device interrupts the motor current flowing through the switching device thus protecting both the switching device and the motor, and accordingly as stated in the Court Decision *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975), the particular placement of a contact in a conductivity measuring device was held to be an obvious matter of design choice. In the instant case positioning the switching device upstream or downstream of the protective device does not affect the protection itself; in either case the current is interrupted thus protecting the switching device against overload. (2) Additionally, it is an "obvious to try" case, i.e. choosing from a finite number of predictable solutions when only two positions are available for placing the switching device. The claim would have been obvious because "a person of ordinary skill has good reason to pursue the known option within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense". See *Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 82 USPQ2d 1321 (Fed. Cir. 2007).

Applicant further attacks the combination of the references as follows: "Moreover, such a redesign ... would also render the dryer motor useless for its intended purpose" (emphasis added). After such statement one would expect the Applicant to explain how the motor would become useless for its intended purpose when the suggested repositioning takes place. However, no explanation is provided and that is the reason that the Examiner is unable to address this impressive but totally groundless statement.